

State of New Mexico
LEGISLATIVE EDUCATION STUDY COMMITTEE

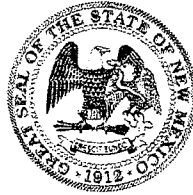
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June 28, 2007

MEMORANDUM

TO: Legislative Education Study Committee

FR: David Harrell 

RE: STAFF REPORT: ERROR IN THE E&E VERSION OF SB 189A

Because of an error in the enrolled and engrossed (E&E) version of SB 189a (Attachment 1), *Charter School Employment Provisions* (Laws 2007, Chapter 259), the version signed by the officers of the Legislature and the Governor and chaptered by the Secretary of State differs from the version that the Legislature passed. In short, the provision in the *Charter Schools Act* that allows a charter school to decide whether the head administrator or the governing body makes hiring and firing decisions remains intact, despite the Legislature's intent to amend the provision to assign hiring and firing authority to the head administrator exclusively, in alignment with the assignment of hiring and firing authority to the school district superintendent for regular public schools.

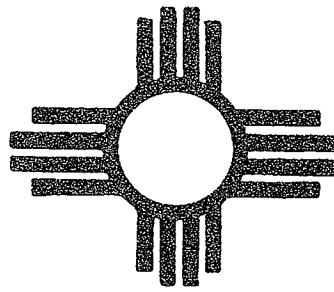
Endorsed by the Legislative Education Study Committee (LESC), SB 189 (Attachment 2) proposed two changes to the *Charter Schools Act* as amended in 2006:

- deleting language allowing a charter school to decide whether the head administrator or the governing body makes hiring and firing decisions (with a default to the governing body if the charter does not specify) and replacing it with language assigning hiring and firing authority to the head administrator exclusively; and
- amending the provisions regarding nepotism to align them with those applicable to regular public schools.

On the Senate floor, the bill was amended to delete the first provision and therefore retain the language in the *Charter Schools Act* allowing the option described above. This Senate Floor Amendment 1 (Attachment 3) contained three numbered parts. The first one changed the title of the bill by striking “PROVIDING FOR EMPLOYMENT DECISIONS BY THE HEAD ADMINISTRATOR.” The other two changed the text by deleting the amendment proposed by the LESC.

In the House Education Committee, the bill was amended again (Attachment 4) to strike Senate Floor Amendment 1, which included all three parts noted above and which restored the bill to its original form as introduced. The Senate concurred with this amendment (Attachment 5). However, apparently in the E&E process, only the first of the three parts of Senate Floor Amendment 1 (changing the title) was recorded; therefore, as signed and chaptered, SB 189a, like the *Charter Schools Act* as amended in 2006, allows a charter school to assign hiring and firing authority either to the head administrator or the governing body. (The E&E version of the bill does contain the amendment relating to nepotism, however.)

Upon advice of the Legislative Council Service, this erroneous version of SB 189a is law – unless it is challenged in court or until the Legislature amends the statute again.



The Legislature of the State of New Mexico

48th Legislature, First Session

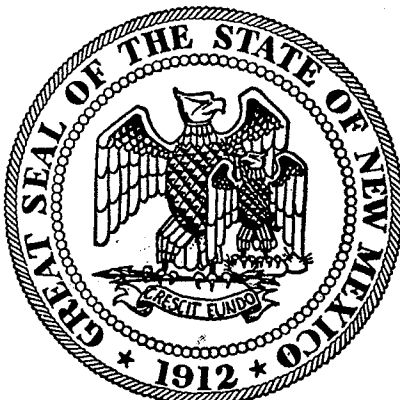
LAWS 2007

CHAPTER 259

SENATE BILL 189, as amended

Introduced by

SENATOR MARY KAY PAPEN
SENATOR MARY JANE M. GARCIA
SENATOR GAY G. KERNAN
SENATOR CYNTHIA NAVA



FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

Chapter 259

AN ACT

RELATING TO CHARTER SCHOOLS; PROVIDING FOR EMPLOYMENT
DECISIONS BY THE HEAD ADMINISTRATOR; CONFORMING THE NEPOTISM
PROVISIONS TO THOSE OF SCHOOL DISTRICTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-8B-10 NMSA 1978 (being Laws 1999,
Chapter 281, Section 10, as amended) is amended to read:

"22-8B-10. CHARTER SCHOOLS--EMPLOYEES.--

A. A charter school shall hire its own employees.
The provisions of the School Personnel Act shall apply to
such employees provided, however, that a charter school may
determine by indicating in its charter that either its
governing body or head administrator shall make all
employment decisions. The governing body shall be deemed to
be responsible for making all employment decisions if the
charter does not specify the decision maker.

B. The head administrator of a charter school
shall not initially employ or approve the initial employment
in any capacity of a person who is the spouse, father,
father-in-law, mother, mother-in-law, son, son-in-law,
daughter or daughter-in-law of a member of the governing body
or the head administrator. The governing body may waive the
nepotism rule for family members of a head administrator.

C. Nothing in this section shall prohibit the

1 continued employment of a person employed on or before July
2 1, 2007." _____

SB 189
Page 2

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Diane D. Denish

Diane D. Denish, President
Senate

Margaret Larragoite

Margaret Larragoite, Chief Clerk
Senate

Ben Lujan

Ben Lujan, Speaker
House of Representatives

Stephen R. Arias

Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 2 day of April, 2007

Bill Richardson

Governor Bill Richardson
State of New Mexico

EDUCATION

Thence

JUDICIARY

SENATE BILL

189

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Mary Kay Pappe
Cynthia L. ...
Ray M. Korman
Mary Jane Garcia

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO CHARTER SCHOOLS; PROVIDING FOR EMPLOYMENT DECISIONS
 BY THE HEAD ADMINISTRATOR; CONFORMING THE NEPOTISM PROVISIONS
 TO THOSE OF SCHOOL DISTRICTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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The provisions of the School Personnel Act shall apply to such
 employees [~~provided, however, that a charter school may~~
~~determine by indicating in its charter that either its~~
~~governing body or head administrator shall make all employment~~
~~decisions. The governing body shall be deemed to be~~
~~responsible for making all employment decisions if the charter~~

.164718.1

underscored material = new
 [bracketed material] = delete

1 ~~does not specify the decision maker]~~. The head administrator
2 of the charter school shall employ, fix the salaries of,
3 assign, terminate and discharge all employees of the charter
4 school.

5 B. The head administrator of a charter school shall
6 not initially employ or approve the initial employment [~~of a~~
7 ~~head administrator]~~ in any capacity of a person who is the
8 spouse, father, father-in-law, mother, mother-in-law, son, son-
9 in-law, daughter or daughter-in-law of a member of the
10 governing body [~~A charter school shall not initially employ or~~
11 ~~approve the initial employment of a licensed school employee~~
12 ~~who is the spouse, father, father-in-law, mother, mother-in-~~
13 ~~law, son, son-in-law, daughter or daughter-in-law of the head~~
14 ~~administrator]~~ or the head administrator. The governing body
15 may waive the nepotism rule for family members of a head
16 administrator.

17 C. Nothing in this section shall prohibit the
18 continued employment of a person employed on or before July 1,
19 2007."

State of New Mexico
Senate

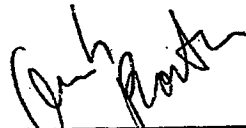
FORTY-EIGHTH LEGISLATURE
FIRST SESSION

February 28, 2007


SENATE FLOOR AMENDMENT number 1 to SENATE BILL 189

Amendment sponsored by Senator Mark Boitano

1. On page 1, lines 11 and 12, strike "PROVIDING FOR EMPLOYMENT DECISIONS BY THE HEAD ADMINISTRATOR;".
2. On page 1, lines 21 through 25, remove the beginning bracket and the line-through.
3. On page 2, line 1, remove the line-through and end bracket and strike the remainder of line 1 and strike all of lines 2 through 4.



Mark Boitano

Adopted  Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date 3-1-07

State of New Mexico
House of Representatives

FORTY-EIGHTH LEGISLATURE
FIRST SESSION, 2007

March 12, 2007

Mr. Speaker:

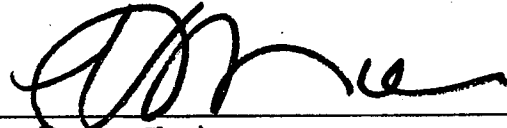
Your EDUCATION COMMITTEE, to whom has been referred

SENATE BILL 189, as amended

has had it under consideration and reports same with
recommendation that it **DO PASS**, amended as follows:

1. Strike Senate Floor Amendment 1.

Respectfully submitted,



Rick Miera, Chairman

Adopted



(Chief Clerk)

Not Adopted

(Chief Clerk)

Date

3/12/07

The roll call vote was 10 For 0 Against

Yes: 10

No: 0

Excused: Williams, Zanetti

Absent: None

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2007 Regular Session

SB 189

CHARTER SCHOOL EMPLOYMENT PROVISIONS

Sponsor: Mary Kay Papen

Current Location: Chapter

Actions: [1] SEC/SJC-SEC [23] DP-SJC [28] DP [31] fl/a- PASSED/S (38-0) [37] HLC/HEC-HLC [43] DP-HEC [46] DP/a [47] PASSED/H (64-0) [44] s/cncrd SGND (Apr.3) Ch.259.

SOURCE: Legislative Council Service